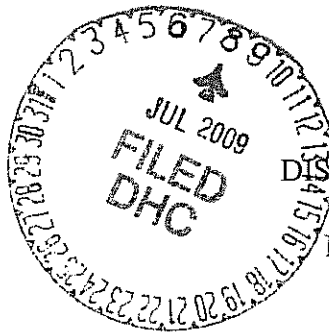


NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
09 DHC 16

THE NORTH CAROLINA STATE BAR,
Plaintiff

v.

RICHARD THOMAS HAYES, V, Attorney,
Defendant

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COMPLAINT

The plaintiff, complaining of the defendant, alleges and says:

1. The plaintiff, the North Carolina State Bar, is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding under the authority granted it in Chapter 84 of the General Statutes of North Carolina, and the Rules and Regulations of the North Carolina State Bar promulgated thereunder.

2. The defendant, Richard Thomas Hayes, V ("Hayes"), was admitted to the North Carolina State Bar on August 24, 1996 and is, and was at all times referred to herein, an Attorney at Law licensed to practice in North Carolina, subject to the rules, regulations, and Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.

Upon information and belief, the plaintiff alleges:

3. During some of the time relevant to this complaint, Hayes actively engaged in the private practice of law in the State of North Carolina and maintained a law office in the city of Raleigh, Wake County, North Carolina. By order of September 9, 2005 served on Hayes on September 13, 2005, Hayes was placed on administrative suspension for failing to comply with his 2004 continuing legal education requirements.

4. During the times relevant to this complaint, Hayes maintained an attorney trust account at Crescent State Bank, account number ending in 4064 ("trust account").

First Claim for Relief – Failure to Reconcile & Failure to Timely Respond

5. Plaintiff realleges and incorporates by reference paragraphs 1-4.

6. On March 21, 2005, a counsel for Chicago Title Insurance Company filed a grievance against Hayes alleging failure to complete title work and failure to pay title policy premiums. The grievance was assigned file number 05G0328.

7. On March 30, 2005, a Letter of Notice was sent to Hayes and he was directed to file a written response within 15 days of receipt of it.

8. Hayes eventually responded to the Letter of Notice on May 16, 2005, upon requesting additional time to fully respond to the allegations. Hayes provided a list of the files completed and stated that all but four files had been resolved. However, Hayes did not furnish any documentation that the premiums were paid.

9. In July 2005 and several times thereafter, Hayes was asked to provide proof to the State Bar that the relevant title insurance premiums had been paid.

10. Hayes failed to respond to those requests.

11. On December 23, 2004, Hayes closed a loan for a client whose last name is Wiggins ("Wiggins").

12. From the closing proceeds, Hayes should have disbursed \$86,470.22 to Option One Mortgage to pay off Wiggins' prior note and deed of trust.

13. On June 3, 2005, Wiggins filed a grievance against Hayes, designated as file number 05G0641, that alleged that Hayes had failed to pay Option One Mortgage.

14. On June 10, 2005, a Letter of Notice and a Subpoena for Cause Audit were sent to Hayes by State Bar investigator Edward R. White, Jr. ("White") in file number 05G0641. White asked Hayes to produce bank records, client ledgers, closing statements, disbursement journals and quarterly trust account reconciliations for the previous year along with the Wiggins file.

15. Hayes responded to the Letter of Notice and demonstrated that the payoff was timely sent to Option One Mortgage, but was rejected by the lender because of a previously undisclosed escrow deficit.

16. Upon learning of the grievance, Hayes again tried to pay off the mortgage and eventually Option One Mortgage agreed to accept the amount Hayes originally sent after the closing.

17. After Hayes reported the resolution of the matter with Option One Mortgage, White asked Hayes to furnish a copy of his canceled check paying the mortgage.

18. Hayes failed to provide White with a copy of the canceled check.

19. Early in the investigation of 05G0328 and 05G0641, White asked Hayes to furnish his client trust account reconciliations for the quarters ending September 30 and December 31, 2004 and March 31, 2005. Hayes provided reconciliations he had done of his bank account balance, but had not reconciled individual client balances from properly maintained client ledgers to the balance in the trust account.

20. White explained to Hayes how he could perform an appropriate reconciliation of his clients' ledgers to his trust account balance using the software system Hayes had on his office computer.

21. On July 26 and August 30, 2005, White asked Hayes to also provide a client trust account reconciliation for the quarter ending June 30, 2005.

22. On August 2, 2005, Hayes closed a refinance loan for a client whose last name was Aponte and Aponte's wife. From the closing proceeds, Hayes should have disbursed \$4,609.94 to the mortgage broker, East Coast Mortgage Group.

23. Hayes failed to make the disbursement to East Coast Mortgage Group.

24. On September 7, 2005, Tom Matusak ("Matusak") of East Coast Mortgage Group filed a grievance against Hayes that was designated as file number 05G0964 for Hayes' failure to pay the mortgage broker.

25. On September 16, 2005, a Letter of Notice and Subpoena for Cause Audit were served on Hayes in 05G0964.

26. On September 30, 2005, Hayes wrote to the Bar and promised to have a substantive response to the 05G0964 grievance, and all other information previously requested by White, to the State Bar by October 10, 2005.

27. Hayes failed to provide any further response.

28. On January 9, 2006, Hayes was subpoenaed to appear at the January 19, 2006 Grievance Committee meeting to provide information concerning 05G0328, 05G0641 and 05G0964.

29. On January 19, 2006, Hayes appeared and provided a statement and additional documents, but did not produce a copy of the canceled checks to Option One Mortgage and East Coast Mortgage. Hayes still had not reconciled ledgers for his clients to the balance in his trust account.

30. On January 23, 2006, Hayes provided further information relating to the grievances. Hayes produced canceled checks showing his disbursements to Option One Mortgage and to East Coast Mortgage. However, Hayes had still not reconciled his clients' ledgers to the balance in his trust account.

31. Hayes' trust account continues to have a significant balance of clients' funds that Hayes has failed to disburse to the intended recipients as directed by his clients.

32. Hayes has failed to properly reconcile his clients' ledger balances to the balance in his trust account. The trust account balance can not be disbursed appropriately until Hayes completes a proper reconciliation.

THEREFORE, the plaintiff alleges that Hayes' foregoing actions constitute grounds for discipline pursuant to NCGS 84-28(b) (2) in that Hayes violated the Revised Rules of Professional Conduct in existence at the relevant time as follows:

- a. by failing to disburse funds promptly from his trust account as directed by his clients, Hayes failed to promptly pay or deliver entrusted property to third persons as directed by his clients in violation of Rule 1.15-2(m);
- b. by failing to respond promptly to the State Bar's requests for information relevant to its investigation of the grievances designated as 05G0328, 05G0641 and 05G0964, Hayes failed to respond to a lawful demand for information from a disciplinary authority in violation of Rule 8.1(b);
- c. by failing to reconcile his individual client balances shown on properly maintained ledgers for each of his clients against his trust account balance on at least a quarterly basis, Hayes failed to, at least quarterly, total and reconcile the individual client balances shown on the ledger of a general trust account with the current bank balance for the trust account as a whole in violation of Rule 1.15-3(c).

Second Claim for Relief – Fritz

33. Plaintiff realleges and incorporates by reference paragraphs 1-32.

34. On May 7, 2004, a client whose last name is Fritz ("Fritz") purchased a mobile home situated on real property in Moncks Corner, South Carolina.

35. Hayes had Charles Feeley, a South Carolina lawyer associated with Hayes' firm, close the Fritz transaction.

36. Hayes' office was supposed to pay the \$185.00 title insurance premium from the closing proceeds to Investors Title, but failed to do so.

37. On December 29, 2004, the tax collector in Moncks Corner, SC advised Fritz that the mobile home she had purchased had been sold at auction on February 2, 2004 for delinquent taxes. Neither Hayes nor Feeley discovered the seller's delinquent taxes prior to the closing and the taxes were not deducted from the seller's proceeds. Fritz was given until February 3, 2005 to pay the delinquent taxes, and any rent owed to the bidder, to reclaim title to her mobile home.

38. Fritz had to pay \$2,117.29 to the tax collector in Moncks Corner, SC and \$744.00 to the bidder to retain title to the mobile home.

39. Fritz contacted Hayes to get him to remedy the tax situation.

40. In January 2005, Hayes contacted the seller, Washington Mutual Bank ("WaMu"), to get WaMu to pay the taxes that should have been deducted from the seller proceeds.

41. On March 16, 2005, WaMu's attorney, Jed Sonstroem, sent Hayes a check for \$3,300 for the delinquent taxes.

42. Hayes delivered the check to his staff and directed that the funds be sent to Fritz, but failed to follow up to make sure that this was done.

43. Fritz contacted the Office of the Disciplinary Counsel in South Carolina about the matter. Freeley's response to Fritz's complaint indicated that Fritz would need to get the file from Hayes to adequately respond to Fritz's allegations. Hayes was asked to produce the file.

44. On February 10, 2006 and June 15, 2006, grievances were opened against Hayes on behalf of Fritz and the SC Office of Disciplinary Counsel under file numbers 06G0157 and 06G0652.

45. Upon being notified of the grievances, Hayes again tried to get Sonstroem to resolve the tax issue. Sonstroem settled the tax issue directly with Fritz. However, Hayes failed to deliver the Fritz closing file to the NC or SC Office of Disciplinary Counsel as requested.

46. Hayes still has not disbursed the \$185 that is in his trust account that should have been paid to Investors Title or returned to Fritz.

THEREFORE, the plaintiff alleges that Hayes' foregoing actions constitute grounds for discipline pursuant to NCGS 84-28(b) (2) in that Hayes violated the Revised Rules of Professional Conduct in existence at the relevant time as follows:

- a. by failing to disburse funds promptly from his trust account as directed by his client Fritz, Hayes failed to promptly pay or deliver

entrusted property to third persons as directed by his clients in violation of Rule 1.15-2(m);

- b. by failing to respond promptly to the State Bar's requests for the Fritz closing file relevant to its investigation of the grievances designated as 06G0157 and 06G0652 and the SC Office of Disciplinary Counsel's investigation of the grievance Fritz filed there, Hayes failed to respond to a lawful demand for information from a disciplinary authority in violation of Rule 8.1(b).

Third Claim for Relief – Ealy

47. Plaintiff realleges and incorporates by reference paragraphs 1-46.

48. On April 23, 2004, Hayes closed a refinance loan for a client whose last name was Ealy ("Ealy"). From the closing proceeds, Hayes should have disbursed \$431.38 to Key Title LLC for a title insurance policy.

49. Hayes failed to pay the \$431.38 to the title insurance company.

THEREFORE, the plaintiff alleges that Hayes' foregoing actions constitute grounds for discipline pursuant to NCGS 84-28(b)(2) in that Hayes violated the Revised Rules of Professional Conduct in existence at the relevant time as follows:

- a. by failing to disburse funds promptly from his trust account as directed by his client Ealy, Hayes failed to promptly pay or deliver entrusted property to third persons as directed by his clients in violation of Rule 1.15-2(m).

Fourth Claim for Relief – Shelton

50. Plaintiff realleges and incorporates by reference paragraphs 1-49.

51. On November 18, 2005, Hayes closed a real estate purchase for a client whose last name was Shelton ("Shelton") and Shelton's wife. From the closing proceeds, Hayes should have disbursed \$425.00 to Axis Title Company for a title insurance policy.

52. Hayes failed to pay the \$425.00 to the title insurance company.

53. On July 30, 2006, upon learning that Hayes had never obtained a title insurance policy for his transaction, Shelton filed a petition for fee dispute resolution with the State Bar for the \$204 portion of the title insurance policy premium that had been charged to him and the \$25 courier fee.

54. Hayes was served by certified mail with Shelton's fee dispute petition and notified of his duty to respond within fifteen days on July 5, 2006 and again on August 24, 2006, but failed to participate in good faith in the fee dispute process.

55. On October 25, 2006, a grievance was opened on Shelton's behalf against Hayes under file number 06G1128.

56. On November 16, 2006, Hayes was served with a Letter of Notice and Substance of Grievance by certified mail and advised of his obligation to respond to the grievance within fifteen days.

57. Hayes failed to respond to the grievance prior to May 22, 2007.

THEREFORE, the plaintiff alleges that Hayes' foregoing actions constitute grounds for discipline pursuant to NCGS 84-28(b)(2) in that Hayes violated the Revised Rules of Professional Conduct in existence at the relevant time as follows:

- a. by failing to disburse funds promptly from his trust account as directed by his client Shelton, Hayes failed to promptly pay or deliver entrusted property to third persons as directed by his clients in violation of Rule 1.15-2(m);
- b. by failing to provide a response to Shelton's fee dispute petition, Hayes failed to participate in good faith in the fee dispute resolution process in violation of Rule 1.5(f)(2);
- c. by failing to respond promptly to the State Bar's requests for a response to the grievance designated as 06G1128, Hayes failed to respond to a lawful demand for information from a disciplinary authority in violation of Rule 8.1(b).

Fifth Claim for Relief – McGruder

58. Plaintiff realleges and incorporates by reference paragraphs 1-57.

59. On June 25, 2005, Hayes closed a refinance loan for a client whose last name is McGruder ("McGruder") and McGruder's wife. From the closing proceeds, Hayes should have disbursed funds to a number of McGruder's creditors to pay off unsecured obligations.

60. Hayes failed to disburse all of the funds he retained to pay off McGruder's debts.

61. Hayes still has not disbursed \$14,054.00 of McGruder's funds.

THEREFORE, the plaintiff alleges that Hayes' foregoing actions constitute grounds for discipline pursuant to NCGS 84-28(b)(2) in that Hayes violated the Revised Rules of Professional Conduct in existence at the relevant time as follows:

- a. by failing to disburse funds promptly from his trust account as directed by his client McGruder, Hayes failed to promptly pay or deliver entrusted property to third persons as directed by his clients in violation of Rule 1.15-2(m);

Sixth Claim for Relief – Taxes

62. Plaintiff realleges and incorporates by reference paragraphs 1-61.

63. Hayes failed to timely file state and federal personal income tax returns for the years 2003 through 2005.

64. Hayes was the person responsible for filing and paying withholding tax for R.T. Hayes and Associates. From October 2005 through the end of that year, Hayes failed to timely file and pay withholding tax to the NC Department of Revenue.

65. Hayes was charged with eight counts of failure to file and pay NC income and withholding tax in Wake County District Court.

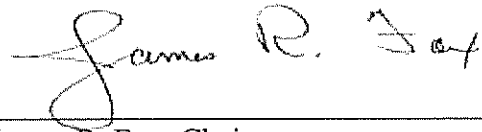
66. On July 27, 2006, Hayes pled guilty to and was convicted of one count of failure to pay NC income tax.

THEREFORE, the plaintiff alleges that Hayes' foregoing actions constitute grounds for discipline pursuant to NCGS 84-28(b)(2) in that Hayes violated the Revised Rules of Professional Conduct as follows:

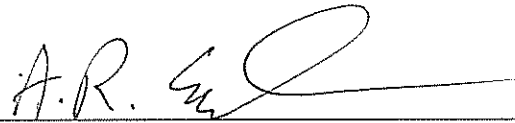
- a. by failing to file and pay NC and federal income and withholding taxes, Hayes knowingly committed criminal acts that reflected adversely on his trustworthiness or fitness as a lawyer in violation of Rule 8.4 (b) and engaged in conduct that involved dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4 (c).

WHEREFORE, the plaintiff prays that disciplinary action be taken against the defendant in accordance with NCGS Sec. 84-28(a) and 27 N.C. Admin. Code, Chapter 1, Subchapter B, § .0114, the Rules and Regulations of the North Carolina State Bar, as the evidence on hearing may warrant, that the defendant be taxed with all costs permitted by law in connection with this proceeding, and for such other and further relief as is appropriate.

This the 8th day of July 2009.



James R. Fox, Chair
Grievance Committee



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